

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

EARL PARRIS, JR., *et al.*,

Plaintiffs,

**CITY OF SUMMERTON,
GEORGIA, Intervenor-Plaintiff,**

v.

3M COMPANY, *et al.*,

Defendants.

Civil Action No.: 4:21-cv-40-TWT

**DAIKIN AMERICA, INC.'S ANSWER TO
COMPLAINT IN INTERVENTION**

Daikin America, Inc. (“DAI”) answers and responds to Intervenor-Plaintiff City of Summerville, Georgia’s (“Summerville” or “Plaintiff”) Complaint in Intervention (“Complaint”) as follows. DAI denies each allegation in the Complaint except those expressly admitted below. This Answer is based upon DAI’s investigation to date, and DAI reserves the right to amend this Answer if and when new information is learned.

STATEMENT OF THE CASE

1. This paragraph does not appear to contain allegations against DAI. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.
2. This paragraph does not require a response, although DAI denies Plaintiff is entitled to any relief from DAI.
3. DAI denies any allegations in this paragraph directed at DAI and denies Plaintiff is entitled to any relief from DAI.

JURISDICTION AND VENUE

4. This paragraph sets forth legal conclusions that do not require a response. To the extent a response is required, DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.
5. This paragraph sets forth legal conclusions that do not require a response. To the extent this paragraph contains allegations against DAI, they are

denied. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

PARTIES

6. On information and belief, DAI admits Plaintiff is a municipal corporation organized under the laws of the State of Georgia. DAI lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegations in this paragraph and therefore denies those allegations.

7. This paragraph does not contain allegations about DAI and does not require a response from DAI.

8. DAI admits only that DAI is a Delaware corporation that has conducted business in this District and has sold products known as fluorinated polymers to Mt. Vernon. DAI otherwise denies the allegations of this paragraph.

9. This paragraph does not contain allegations about DAI and does not require a response from DAI.

10. This paragraph does not contain allegations about DAI and does not require a response from DAI.

11. This paragraph does not contain allegations about DAI and does not require a response from DAI.

12. This paragraph does not require a response.

FACTUAL ALLEGATIONS

13. This paragraph does not appear to contain allegations against DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

14. This paragraph does not appear to contain allegations against DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

15. DAI admits that PFAS are man-made substances and that science has shown certain PFAS such as PFOA and PFOS are persistent in the environment. DAI admits that, in 2016, EPA issued a “Drinking Water Health Advisory” for PFOA and PFOS. DAI denies that this paragraph accurately or completely reflects

statements or findings by the referenced organizations and denies the remaining allegations of this paragraph.

16. This paragraph does not appear to contain allegations against DAI. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

17. This paragraph does not appear to contain allegations against DAI. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

18. Denied.

19. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph regarding Plaintiff's treatment processes and therefore denies those allegations. DAI denies the remaining allegations of this paragraph.

20. DAI denies that this paragraph accurately or completely reflects statements or findings by the referenced organizations and denies the remaining allegations of this paragraph.

21. Denied as phrased.

22. DAI admits that, in 2016, EPA issued a “Drinking Water Health Advisory” for PFOA and PFOS.

23. DAI admits EPA issued a Drinking Water Advisory in 2016 for PFOA and PFOS and made certain statements in support thereof. DAI denies this paragraph accurately or completely reflects EPA’s statements or findings, and DAI disputes the statements and findings, other than PFOA and PFOS being persistent in the environment. DAI denies the remaining allegations in this paragraph.

24. DAI admits ATSDR issued the referenced report but denies this paragraph accurately or completely reflects the statements in the related document. DAI denies the remaining allegations in this paragraph.

25. DAI admits only that certain states have recommended or adopted regulatory levels for PFOA and/or PFOS in drinking water lower than the 2016 EPA Drinking Water Health Advisory. DAI lacks knowledge or information sufficient to

form a belief about the truth of the remaining allegations in this paragraph and therefore denies those allegations.

26. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

27. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

28. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

29. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

30. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

31. This paragraph does not appear to contain allegations against DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations. DAI denies any allegations directed at DAI.

32. This paragraph does not appear to contain allegations against DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations. DAI denies any allegations directed at DAI.

33. This paragraph does not appear to contain allegations against DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations. DAI denies any allegations directed at DAI.

34. This paragraph does not appear to contain allegations against DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations. DAI denies any allegations directed at DAI.

35. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

36. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

37. DAI denies any allegations directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

38. This paragraph does not require a response, although DAI denies any allegations that could be construed against DAI.

COUNT ONE

NEGLIGENCE

39. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

40. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

41. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

42. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

43. This paragraph contains legal conclusions to which no response is required. To the extent this paragraph contains any allegations directed to DAI, they are denied.

44. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

45. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

46. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

47. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT TWO

Public Nuisance

48. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

49. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.

50. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.

51. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.

52. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

53. DAI denies it has discharged any substances in the subject area and further denies any allegations of this paragraph to the extent directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of any allegations directed towards others and therefore denies those allegations.

54. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. DAI denies the allegations of this paragraph directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of any allegations directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT THREE

Private Nuisance

60. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

61. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.

62. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

63. Denied.

64. DAI denies it has discharged any substances in the subject area and further denies any allegations of this paragraph to the extent directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of any allegations directed towards others and therefore denies those allegations.

65. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

66. Denied.

67. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

68. Denied.

69. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT FOUR

Abatement of Nuisance

70. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

71. Denied.

72. Denied.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT FIVE

Trespass

73. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

74. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.

75. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and therefore denies those allegations.

76. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

77. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

78. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

79. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

80. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

81. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

82. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

83. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

84. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT SIX

Wantonness and Punitive Damages

85. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

86. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

87. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

88. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

89. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

90. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

91. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

92. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

93. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

94. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

95. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT SEVEN

Injunctive Relief

96. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

97. DAI admits Plaintiff seeks the stated relief, but DAI denies Plaintiff is entitled to the relief sought and denies all factual allegations against DAI.

98. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT EIGHT

Attorneys' Fees and Expenses of Litigation

99. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

100. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

In response to the unnumbered paragraph beginning “WHEREFORE...”, DAI denies Plaintiff is entitled to any relief from DAI.

COUNT NINE

Georgia Water Quality Control Act

101. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

102. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

103. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

104. DAI denies that it has discharged, deposited, or otherwise caused anything to enter into Raccoon Creek or anywhere else in the subject area. DAI denies any allegations of this paragraph to the extent directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of any allegations directed towards others and therefore denies those allegations.

105. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

106. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

107. This paragraph contains legal conclusions to which no response is required. To the extent any response is required, DAI denies the allegations.

108. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

COUNT TEN
Negligent Failure to Warn

109. DAI incorporates by reference its responses to the prior paragraphs of the Complaint as if re-stated herein.

110. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

111. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

112. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

113. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief

about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

114. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

115. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

116. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

117. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

118. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations.

119. DAI denies any allegations in this paragraph to the extent any are directed at DAI. DAI lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph directed towards others and therefore denies those allegations. DAI denies Plaintiff is entitled to any relief from DAI.

In response to the unnumbered “RELIEF DEMANDED” section, DAI denies all allegations in that section and denies Plaintiff is entitled to any relief from DAI.

WHEREFORE, DAI requests that the claims against DAI be dismissed with prejudice, and costs and fees be taxed against Plaintiff.

DAI denies any and all material allegations in the Complaint that require a response from DAI and have not been expressly admitted herein.

DEFENSES

DAI asserts the following defenses:

FIRST DEFENSE

DAI denies the material allegations of the Complaint and demands strict proof thereof.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted against DAI.

THIRD DEFENSE

DAI asserts that it is not guilty of the matters and things alleged in the Complaint.

FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations, statutes of repose (including but not limited to O.C.G.A. § 51-1-11), rules of repose, res judicata, collateral estoppel, accord and satisfaction, consent, license, permit, acquiescence, release, laches, waiver, unclean hands, and/or estoppel.

FIFTH DEFENSE

Plaintiff's claims are barred in whole or in part because DAI's conduct was in accordance with the applicable standards of care under all laws, regulations, industry practice, and state-of-the-art knowledge, and the activities of DAI in accordance

with such standards were reasonable as a matter of law. DAI at all times acted reasonably, in good faith, and with the skill, prudence, and diligence of others in the industry at the time.

SIXTH DEFENSE

DAI asserts that Plaintiff's alleged damages are the result of one or more independent, superseding, and/or intervening causes.

SEVENTH DEFENSE

DAI asserts that there is no causal relationship between its alleged actions or conduct and plaintiff's alleged damages. Plaintiff's damages, if any, were caused solely by the actions, omissions, or conduct of persons and/or entities for whom or which DAI is not responsible and/or were caused by acts, omissions, conduct, and/or factors beyond the control of DAI.

EIGHTH DEFENSE

DAI asserts that Plaintiff's claim for punitive damages is violative of provisions of the United States Constitution and the Georgia Constitution. Plaintiff's claim for punitive damages is subject to the limitations cap, and the substantive and legal protections, contained in O.C.G.A. § 51-12-1, *et seq.*

NINTH DEFENSE

Plaintiff's claims are preempted, in whole or in part, by the applicable federal statutes and regulations pursuant to the Supremacy Clause of the United States Constitution.

TENTH DEFENSE

An award of punitive damages in this case would violate the Fourth, Fifth, Sixth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States as well as provisions of the Georgia Constitution, on the following separate and several grounds:

- (a) that civil procedures pursuant to which punitive damages are awarded may result wrongfully in a punishment by a punitive damages award after the fact;
- (b) that civil procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing;
- (c) that civil procedures pursuant to which punitive damages are awarded fail to provide means for awarding separate judgments against alleged joint tortfeasors;

- (d) that civil procedures pursuant to which punitive damages are awarded fail to provide a limit on the amount of the award against the defendants;
- (e) that civil procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages;
- (f) that civil procedures pursuant to which punitive damages are awarded fail to provide specific standards for the award of punitive damages;
- (g) that civil procedures pursuant to which punitive damages are awarded permit the award of punitive damages upon satisfaction of a standard of proof less than that applicable to the imposition of criminal sanctions;
- (h) that civil procedures pursuant to which punitive damages are awarded permit multiple awards of punitive damages for the same alleged act;
- (i) that civil procedures pursuant to which punitive damages are awarded fail to provide a clear, consistent appellate standard of review of an award of punitive damages;
- (j) that civil procedures pursuant to which punitive damages are awarded permit the admission of evidence relative to the punitive damages in the same proceeding during which liability and compensatory damages are determined;

(k) that standards of conduct upon which punitive damages are awarded are vague;

(l) that civil procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines;

(m) that civil procedures pursuant to which punitive damages are awarded permit the award of punitive damages upon satisfaction of a standard of proof which is not heightened in relation to the standard of proof for ordinary civil cases;

(n) that civil procedures pursuant to which punitive damages are awarded permit the imposition of arbitrary, capricious or oppressive penalties;

(o) that civil procedures pursuant to which punitive damages are awarded fail to limit the discretion of the jury in the award of punitive damages.

ELEVENTH DEFENSE

Plaintiff has failed to mitigate its damages, if any.

TWELFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the prior nuisance doctrine.

THIRTEENTH DEFENSE

Plaintiff's recovery, if any, should be barred or reduced in proportion to its own culpable conduct, including its own negligence, assumption of the risk, acquiescence, or misuse.

FOURTEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, its own contributory negligence.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred due to the failure to join indispensable parties (under Fed. R. Civ. P. 19) and real-parties-in-interest (under Fed. R. Civ. P. 17).

SIXTEENTH DEFENSE

Plaintiff's claimed damages are speculative, remote, and not reasonably foreseeable.

SEVENTEENTH DEFENSE

DAI denies that its conduct was in any manner negligent or wanton.

EIGHTEENTH DEFENSE

DAI denies that it or any of its agents or employees breached any duty or obligation allegedly owed to Plaintiff.

NINETEENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of comparative fault, and to the extent that any other Defendant has settled or may in the future settle with Plaintiff, DAI asserts its entitlement to an appropriate credit, setoff, or reduction of any judgment against it.

TWENTIETH DEFENSE

Plaintiff's claim for attorney's fees fails because there is no contractual, statutory, or other basis for an award of attorney's fees in this lawsuit. DAI further did not act in a manner that gives rise to a claim for attorneys' fees or expenses in this lawsuit.

TWENTY-FIRST DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of prescription.

TWENTY-SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, by its lack of standing.

TWENTY-THIRD DEFENSE

Plaintiff has suffered no legally compensable present injury.

TWENTY-FOURTH DEFENSE

Plaintiff's claims are barred, in whole or in part, by the Public Services Doctrine.

TWENTY-FIFTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of consent and/or release.

TWENTY-SIXTH DEFENSE

Plaintiff's claims fail as improper collateral attacks on properly issued permits.

TWENTY-SEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part because the harm is divisible and attributable to others.

TWENTY-EIGHTH DEFENSE

Plaintiff should be required to provide a more definite statement of their allegations as to each defendant. As currently pled, plaintiffs' Complaint violates the group pleading doctrine.

TWENTY-NINTH DEFENSE

Plaintiff has not suffered a concrete and particularized injury.

THIRTIETH DEFENSE

DAI materially complied with all applicable federal, state, and local permitting requirements, regulations, standards, and guidelines.

THIRTY-FIRST DEFENSE

Any alleged injury or harm was not foreseeable.

THIRTY-SECOND DEFENSE

The requested injunctive relief would subject DAI to a grossly disproportionate hardship. The requested injunctive relief would result in unlawful interference with transportation and commerce in the waters of the U.S. Plaintiff is not entitled to any injunctive or equitable relief against DAI as Plaintiff has an adequate remedy at law.

THIRTY-THIRD DEFENSE

Plaintiff's claims are barred by the Economic Loss Doctrine.

THIRTY-FOURTH DEFENSE

DAI did not owe or breach any duty to Plaintiff.

THIRTY-FIFTH DEFENSE

The proximate cause of any injury to Plaintiff was an event or incident which was not legally foreseeable by DAI, and therefore DAI has no legal liability for any of Plaintiff's alleged damages.

THIRTY-SIXTH DEFENSE

Plaintiffs nuisance claim fails against DAI because DAI did not create, cause, continue, or maintain the alleged nuisance or otherwise have control over the cause of alleged harm.

THIRTY-SEVENTH DEFENSE

Plaintiff's claims are barred by the bulk supplier and sophisticated user doctrines.

THIRTY-EIGHTH DEFENSE

Plaintiff's claims are barred in whole or in part to the extent they seek to impose liability based on retroactive application of laws, regulations, standards, or guidelines.

THIRTY-NINTH DEFENSE

Any recovery by Plaintiff may be barred or reduced by the negligence, fault, or carelessness of others for whose conduct DAI is not responsible. Any judgment rendered against DAI in this action, under all theories of liability plead, should be limited to the fault, if any, attributable to DAI. DAI is entitled to apportion its fault, if any, to the fault of all other persons who are or could be responsible for any of

Plaintiff's damages regardless of whether such persons are parties to this action, and regardless of whether it is ultimately shown that Plaintiff was negligent. *See, e.g.*, Ga. Code Ann. § 51-12-33.

FORTIETH DEFENSE

DAI may be entitled to a set-off in the event Plaintiff has received or does receive payment from any source relating to the facts and circumstances at issue in this lawsuit.

FORTY-FIRST DEFENSE

DAI did not have any duty to warn. Any such duty, if it existed, was either not necessary or was satisfied, discharged, or unnecessary due to the knowledge of risk by others, including Plaintiff. The lack of or alleged inadequacy of any warnings were also not a proximate cause of any of Plaintiff's injuries.

FORTY-SECOND DEFENSE

Plaintiff's claim for lost profits fails because they are too speculative. Plaintiff's claims for lost revenue are not recognized by Georgia law. Plaintiff is otherwise not entitled to any damages from DAI.

FORTY-THIRD DEFENSE

DAI hereby adopts and incorporates the affirmative defenses set forth by its co-defendants in this case.

RIGHT TO ASSERT ADDITIONAL DEFENSES

DAI reserves the right to assert additional defenses based upon information learned during the course of this litigation and/or through discovery in this action.

Dated: April 21, 2022

/s/ William E. Underwood

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CERTIFICATE UNDER L.R. 7.1.D.

Pursuant to Northern District of Georgia Civil Local Rule 7.1.D., the undersigned counsel certifies that the foregoing filing is a computer document and was prepared in Times New Roman 14-point font, as mandated in Local Rule 5.1.C.

/s/ William E. Underwood

William E. Underwood, Ga. Bar No. 401805

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 21, 2022, I electronically filed the foregoing DAIKIN AMERICA, INC.'S ANSWER TO COMPLAINT IN INTERVENTION with the Clerk of Court by using the CM/ECF system, which has notified all counsel of record.

/s/ William E. Underwood

William E. Underwood, Ga. Bar No. 401805